



Report

of the

Commission To Study And Recommend Legislation On Certain Criminal Laws Relating To Public Morality

February, 1967

REPORT OF THE COMMISSION TO STUDY AND
RECOMMEND LEGISLATION ON CERTAIN CRIMINAL LAWS
RELATING TO PUBLIC MORALITY

To the Honorable Dan K. Moore, Governor of North Carolina, and to the General Assembly of 1967:

Pursuant to Joint Resolution 75 of the General Assembly of 1965, there was created the "Commission to Study and Recommend Legislation on Certain Criminal Laws Relating to Public Morality." The Commission is constituted as follows: Mr. V. L. Bounds, Director of Prisons, and Dr. Eugene A. Hargrove, Commissioner of Mental Health, both ex officio members; Dr. James Taylor Vernon of Morganton, a physician named by the Dean of the School of Medicine of the University of North Carolina; Dr. Hans Lowenbach of Durham, a physician named by the Medical Society of the State of North Carolina; Mr. Charles B. Young of Raleigh, an attorney named by the North Carolina State Bar; Mr. Jack Moody of Siler City, an attorney and a member of the 1965 General Assembly named by the Speaker of the House; Senator J. Ruffin Bailey of Raleigh, an attorney and a member of the 1965 General Assembly named by the President of the Senate; Mr. Doran J. Berry of Fayetteville and Mr. James T. Hedrick of Durham, both attorneys and members at large named by the Governor, who also designated Mr. Bounds to serve as Chairman of the Commission.

The Commission engaged the services of Mr. Douglas Gill, an Assistant Director of the Institute of Government, U.N.C., and wishes to commend him for his diligent work in conducting research and preparing materials useful to the Commission. Advantage was also taken of valuable assistance given by Dr. Dan Radar, Deputy Director, State Department of Mental Health, and by Dr. Ben Britt, Director of Medical and Mental Health Services, State Prison Department.



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The duties of the Commission, as prescribed in the resolution, were "to study the laws and procedures in other states relating to the matters currently covered by G. S. 14-177 and G. S. 14-202.1" (Crimes against nature; Taking indecent liberties with children) and to

- "a. Consider and recommend to the 1967 General Assembly the adoption of adequate laws dealing with said offenses and offenders;
- b. Consider and recommend pre-conviction and post-conviction psychiatric examination of those charged or convicted of violating any of said laws;
- c. Consider and recommend legislation looking to the early detection of potential dangerous offenders and their necessary detention, care, and treatment;
- d. Consider and recommend legislation concerning the detention, treatment, and rehabilitation of those committed to any prison or institution on account of said offenses."

Following the initial meeting of the Commission, four committees were appointed by the Chairman from its membership to facilitate achievement of the purposes for which it was created. These committees were composed as follows:

Laws Dealing with Offenses

Senator Bailey, Chairman
Mr. Berry
Dr. Lowenbach
Mr. Young

Psychiatric Examinations of Offenders

Dr. Lowenbach, Chairman
Mr. Berry
Mr. Moody
Dr. Vernon

Early Detection of Potential Offenders

Mr. Hedrick, Chairman
Dr. Hargrove
Dr. Vernon
Mr. Young

Treatment of Offenders

Dr. Hargrove, Chairman
Senator Bailey
Mr. Hedrick
Mr. Moody

The reports and recommendation of each committee were discussed by the full Commission. This report reflects the consensus of the Commission regarding the findings and recommendation of its committees.

Laws Dealing with Offenses and Offenders

Section 14-177 of the General Statutes of North Carolina provides:

"If any person shall commit the crime against nature, with mankind or beast, he shall be guilty of a felony, and he shall be fined or imprisoned in the discretion of the court." This law has antecedents in old English statutes. Modifications made from time to time in North Carolina have not completely clarified the scope of this section, but sexual acts with animals, acts between humans per anum, and acts between man and man per os are clearly covered. Dictum in one North Carolina case suggests that this statute encompasses all acts of "a bestial character" related to sodomy and buggery "whereby degraded and perverted sexual desires are sought to be gratified." The punishment for its violation was reduced in 1965 from imprisonment for not less than five or more than sixty years to fine or imprisonment in the discretion of the court (which results in a maximum imprisonment of ten years).

Section 14-202.1 of our General Statutes, which was enacted in 1955, provides: "Any person over 16 years of age who, with intent to commit an unnatural sexual act, shall take, or attempt to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years, or who shall, with such intent, commit, or attempt to commit, any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, shall, for the first offense, be guilty of a misdemeanor and for a second or subsequent offense shall be guilty of a felony, and shall be fined or imprisoned in the discretion of the court." This statute has been construed as complementary and supplementary to G. S. 14-177, condemning those acts of an unnatural sexual nature against children under 16 years of age by persons older than 16, which acts

cannot be reached and punished under the provisions of G. S. 14-177.

A survey of the laws in other jurisdictions revealed that only two states, Illinois and New York, had enacted laws relating to unnatural sexual acts and child molesting that were substantially different from the analogous statutes of North Carolina. (Punishments ranged quite widely; however, even in the states with substantive provisions similar to North Carolina's.) In addition, the American Law Institute's Model Penal Code and its Tentative Draft of the Model Penal Code served as examples of legislative variations from the more common pattern found throughout the United States.

These four examples of legislation raised two major possibilities: (1) that the criminal sanction against deviate behaviour between consenting adults be removed; and, (2) regardless of the presence or absence of a prohibition against such behaviour between consenting adults, that the offenses included within the present crime-against-nature statute be graded into degrees, each carrying different penalties.

Neither the Illinois criminal code nor the final version of the Model Penal Code included deviate behaviour between consenting adults among criminal acts. The New York legislation and the tentative draft of the Model Penal Code both treated such behaviour as low-grade crimes. All four of these legislative examples, however, to some extent graded into various offenses some differing types of behaviour that are now included within other states' crime-against-nature laws.

After consideration of both of these major possibilities, the Commission concluded that both of them should be rejected and recommends that the existing laws now be retained. The Commission also recommends, however, that continued study be directed toward the problems reflected

by these possibilities and the part the criminal law should play in resolving the difficulties. The reasons, briefly stated, for these recommendations follow below under the pertinent headings.

Removal of criminal sanction against deviate behaviour between consenting adults. The Commission took note of the argument that even though it may be a legitimate concern of the state to control such deviate behaviour, other factors militate against a state's use of the criminal law as a means of trying to effect this control. In short, this argument says that such a criminal law does no good in reducing the amount of such behaviour that occurs, and, on the other hand, the law causes damage that could otherwise be avoided. No good comes of the law, the argument goes, because the kinds of people who do such acts are not deterrable by the fear of punishment and, even if they were, the threat of apprehension is so slight that no such fear is created. The harm done by such a law is said to include these effects: the threat of revelation to the police is a tool in the hands of blackmailers wishing to victimize such deviates; efforts by the police to enforce such laws are difficult and divert their efforts from preventing other crimes that are more directly harmful; and the criminality of such behaviour makes it more appealing to some of its practitioners. The Commission believes that these considerations do not compel a change in the statutes under study.

In the first place, the facts upon which such considerations are based do not appear to have been clearly established. It is not clear that the law fails to discourage deviate behaviour; even if there is no deterrent effect on present practitioners, it seems possible that the moral disapproval of society evidenced by such a statute might discourage the spread of deviate practices. The Commission is unwilling to assume

that negative impacts of the law occur in North Carolina in the absence of dependable evidence.

Secondly, the Commission acknowledged a further consideration for maintaining the present law: the possibility that removal of an existing criminal sanction may create the appearance that the State now positively condones that behaviour which was previously prohibited.

Grading of Various Acts Now Included Within "Crime Against Nature" and "Child Molesting." The movement towards more refined grading of various kinds of deviate behaviour is evidenced by all of the recent legislative efforts mentioned earlier. (New York's new law, for example, includes sodomy in the first, second, and third degrees.) North Carolina's law certainly lacks any advantages that such grading might have; a brief inquiry into the offenses for which prisoners had been committed to the North Carolina prison system revealed that among those who had been imprisoned for crime against nature were those who had committed deviate acts with consenting adults, with animals, with unwilling adults, and with unsuspecting children.

The Commission is not yet convinced that at this time any of the legislative models studied would promote individualized justice better than the existing law as modified by the 1965 General Assembly. The judge now has a wide discretion to impose punishment ranging from a fine to imprisonment for ten years, and has the advantages of probation and of the rehabilitative work release programs, as well as conventional imprisonment, open to him as dispositional measures.

Continued Study. A persuasive factor in the Commission's recommendations that no alterations now be made in North Carolina's crime-against-nature and taking-indecent-liberties-with-children laws is the lack of

knowledge that would justify any change. The Commission believes that enactment of legislation recommended in this report will result in an accumulation of reliable information throwing light into areas where the darkness of doubt about the dependability of reported research, or the blackness of a void, has impeded pursuit of the purposes for which this Commission was created; therefore, the Commission also recommends adoption of a joint resolution by the 1967 General Assembly providing for the appointment of a Commission to continue and extend the work of this Commission.

Psychiatric Examination of Offenders

This Commission, influenced by the needs for treatment well known to the general public, psychiatrists, and prison officials and by legislative and judicial needs for further information about persons charged with or convicted of violating the laws under study, considered the possibility of providing psychiatric and medical examinations that could be used in three ways: by the judge following conviction to help determine an appropriate sentence; by the correctional agencies receiving the defendant for treatment and rehabilitation; and by researchers investigating sexually deviant behaviour of humans in order to accumulate information which would either support the continuance of, or suggest changes or modifications in, our present laws dealing with such behaviour.

The Commission believes that legislation providing for pre-conviction psychiatric and medical examinations is needed. Present statutory provisions for post-conviction examinations would seem to be adequate if fully implemented.

The proposed legislation would require thorough psychiatric

examinations of all persons judicially charged with the crime against nature or child molesting if the defendant consents to such an examination. If the defendant were convicted, the results of this examination could be used by the judge in determining the disposition and by correctional agencies receiving the offender for treatment and rehabilitation. Whether the defendant were to be convicted or acquitted, however, a report of the examination would be filed with the State Department of Mental Health to be available for research. Only if the report were to be used by the judge or a correctional agency following conviction could the name of the defendant be linked with his report.

Since psychiatric knowledge is rapidly increasing, the Commission also recommends that this legislation on pre-conviction examination of charged offenders be reviewed periodically. The Commission recommends the adoption of a resolution by the 1967 General Assembly calling for review by a commission of psychiatrists appointed by the Governor with the advice of the Medical Society of the State of North Carolina and of the Executive Committee of the North Carolina Neuropsychiatric Association.

Early Detection of Potential Offenders

This Commission found no basis for recommending legislation looking to the early detection of potential dangerous offenders and their detention, care, and treatment. A review of reports regarding efforts made to establish methods for early detection and treatment of potential offenders left the Commission with the impression that research results have not yet pointed the way for legislative action in this area.

Detention, Treatment, and Rehabilitation

The Commission recognizes that offenders against the criminal laws under study present particularly difficult problems regarding detention, treatment, and rehabilitation. The treatment needs of this group may be aggravated by the labeling effects of conviction and by the consequences of incarceration in a one-sex society where privacy is practically eliminated.

Reports of detention, treatment, and rehabilitation practices of other states were studied in relation to resources available or likely to become available to the correctional and mental health agencies in North Carolina. This Commission recommends support for the approach being made in North Carolina toward the development of improved medical, mental health, and other rehabilitative programs within the State prison system by cooperative efforts of the Prison Department, the Department of Mental Health, and other public and private agencies, coupled with the plans of the Prison Department for improving its physical facilities and staffing patterns. This approach recognizes that the criminal offense for which an inmate is incarcerated is but one of a complex of factors that should be considered in determining appropriate detention, treatment, and rehabilitative measures for an individual offender.

The feature which distinguishes North Carolina's program is its recognition that offenders against the same laws may not necessarily have the same underlying psychopathology. Accordingly, psychiatric services provided offenders by this program are based upon the individual's psychiatric treatment needs rather than on the particular crime of which he was convicted. Furthermore, these psychiatric services are provided to prison inmates within the structure of the prison system.

Behind this approach lies the belief that psychiatric attention to the problems of prison inmates is an integral part of a comprehensive correctional program.

Since both correctional and psychiatric techniques are needed in this approach, the Commission believes strengthening cooperative efforts by correctional and mental health agencies should be encouraged. To this end the Commission recommends that the General Statutes specifying the powers and duties of the State Department of Mental Health, and providing for divisions of that Department, be amended so as to facilitate further development of programs conducted by the State Department of Mental Health in cooperation with the State's correctional and penal institutions and agencies, and so as to provide for a Division of Correctional Mental Health Services to administer such programs.

The Commission desires to conclude this report by expressing its indignation about the conditions within the State prison system, revealed by the prison officials, which result in sexual assaults being inflicted by predatory inmates on relatively defenseless inmates, assaults which prison personnel are apparently unable to prevent because of the inadequacy of physical facilities and staffing patterns. The Commission recommends and urges legislative action appropriate to enable the Prison Department to correct these deplorable conditions.

Joint Resolution 75 of the General Assembly of 1965, creating this Commission, did not require us to draft the bills necessary to put our recommendations into effect. But to aid consideration of them, we have prepared tentative drafts of bills embodying these recommendations. Final drafts will be prepared for presentation to the 1967 General Assembly.

Summary of Recommendations

The following are brief restatements of recommendations made in the body of this report.

Recommendations for legislation

- a. That the 1967 General Assembly adopt a joint resolution providing for the appointment of a Commission to continue and extend the work of this Commission.
- b. That the 1967 General Assembly enact legislation to provide for pre-conviction psychiatric and medical examinations of persons judicially charged with violations of G. S. 14-177 or G. S. 14-202.1, who consent to such examinations with the understanding that the examination reports will be used for research regardless of the outcome of the criminal action and that, in the event of conviction, the reports will be made available to the sentencing judge and to any correctional agency receiving the offender for treatment.
- c. That enactment of the recommended legislation providing for psychiatric and medical examinations of persons charged with these offenses be followed by adoption of a joint resolution providing for the appointment of a commission with special competence to evaluate periodically such legislation in the light of increasing psychiatric knowledge and to recommend any changes necessary to take advantage of advances in knowledge and understanding.
- d. That the 1967 General Assembly enact legislation to facilitate further development of programs conducted by the State Department of Mental Health in cooperation with the State's correctional and penal institutions and agencies and to provide for a Division of Correctional Mental Health Services within the Department of Mental Health to administer such programs.

Other Recommendations

- a. That the 1967 General Assembly make no changes in existing statutes on crime against nature (G. S. 14-177) and taking indecent liberties with children (G. S. 14-202.1).
- b. That no legislation be enacted by the 1967 General Assembly regarding the early detection of potential offenders and their detention, care, and treatment.
- c. That support be given to the development of improved medical, mental health, and other rehabilitative

programs within the State prison system by cooperative efforts of the Prison Department, the Department of Mental Health, and other public and private agencies.

- d. That support be given to plans of the Prison Department for acquiring the means to correct the deplorable conditions facilitating sexual assaults within the State prison system.

Respectfully submitted,

V. L. Bounds

V. L. Bounds, Chairman
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